

**SENATE**  
**STATE OF MINNESOTA**  
**EIGHTY-NINTH SESSION**

**S.F. No. 2857**

(SENATE AUTHORS: HOFFMAN, Abeler and Rosen)

DATE	D-PG	OFFICIAL STATUS
03/17/2016	5105	Introduction and first reading Referred to Health, Human Services and Housing
04/01/2016		Comm report: To pass as amended Second reading

A bill for an act

relating to human services; modifying the disability waiver rate system;  
amending Minnesota Statutes 2014, sections 256B.0916, subdivision 8;  
256B.4914, by adding a subdivision; Minnesota Statutes 2015 Supplement,  
section 256B.4914, subdivisions 6, 10.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2014, section 256B.0916, subdivision 8, is amended to read:

Subd. 8. **Financial information by county and waiting list data reporting.**

(a) The commissioner shall make available to interested parties, upon request, on the department's Web site:

(1) the most recent legislative appropriation available for each of the disability home and community-based waiver programs authorized under sections 256B.092 and 256B.49; and

(2) the most current financial information by, updated at least monthly, for each of the disability home and community-based waiver programs authorized under sections 256B.092 and 256B.49, for each county and tribal agency, including:

(i) the amount of resources allocated for the home and community-based waiver for persons with developmental disabilities;

(ii) the amount of resources committed, authorized for participants;

(iii) the number of persons screened and waiting for services, listed by the number of months on the waiting list, age group, and the type of services requested by those waiting; and

(iv) the amount of allocated resources not committed authorized and the amount not spent.

2.1 (b) By August 15 of each year, the commissioner shall post a report on the  
2.2 department's Web site that includes:

2.3 (1) the most current information listed in paragraph (a);

2.4 (2) for the previous 12 months, a list of county and tribal agencies required to submit  
2.5 a corrective action plan under subdivision 11 or 12 or section 256B.49, subdivision 26 or  
2.6 27, and a description of any recoupment or other actions taken as provided in subdivision  
2.7 11 or 12 or section 256B.49, subdivision 26 or 27; and

2.8 (3) for the most recent 12-month period, a quarterly list of the county and tribal  
2.9 agencies from which resources were transferred as authorized in section 256B.092,  
2.10 subdivision 11, or 256B.49, subdivision 11a, the amount of resources transferred from  
2.11 each agency, and a list of the county and tribal agencies that received increased resources  
2.12 as a result of the transfers and the amounts provided to each county and tribal agency.

2.13 Sec. 2. Minnesota Statutes 2015 Supplement, section 256B.4914, subdivision 6,  
2.14 is amended to read:

2.15 Subd. 6. **Payments for residential support services.** (a) Payments for residential  
2.16 support services, as defined in sections 256B.092, subdivision 11, and 256B.49,  
2.17 subdivision 22, must be calculated as follows:

2.18 (1) determine the number of shared staffing and individual direct staff hours to meet  
2.19 a recipient's needs provided on site or through monitoring technology as follows:

2.20 (i) overnight shared staffing is based on the resident with the highest assessed need;

2.21 (ii) daytime staffing hours are calculated using the daytime shared staffing  
2.22 worksheet. Daytime staffing hours are defined as a six-hour period of time on weekdays.  
2.23 Shared staffing during the day is divided equally by the number of individuals needing  
2.24 daytime staffing at least one day per week; and

2.25 (iii) individuals with individual staffing will participate equally in the shared staffing  
2.26 that is provided in the home.

2.27 (2) personnel hourly wage rate must be based on the 2009 Bureau of Labor Statistics  
2.28 Minnesota-specific rates or rates derived by the commissioner as provided in subdivision  
2.29 5. This is defined as the direct-care rate;

2.30 (3) for a recipient requiring customization for deaf and hard-of-hearing language  
2.31 accessibility under subdivision 12, add the customization rate provided in subdivision 12  
2.32 to the result of clause (2). This is defined as the customized direct-care rate;

2.33 (4) multiply the number of shared and individual direct staff hours provided on site  
2.34 or through monitoring technology and nursing hours by the appropriate staff wages in  
2.35 subdivision 5, paragraph (a), or the customized direct-care rate;

3.1 (5) multiply the number of shared and individual direct staff hours provided on site  
3.2 or through monitoring technology and nursing hours by the product of the supervision  
3.3 span of control ratio in subdivision 5, paragraph (b), clause (1), and the appropriate  
3.4 supervision wage in subdivision 5, paragraph (a), clause (16);

3.5 (6) combine the results of clauses (4) and (5), excluding any shared and individual  
3.6 direct staff hours provided through monitoring technology, and multiply the result by one  
3.7 plus the employee vacation, sick, and training allowance ratio in subdivision 5, paragraph  
3.8 (b), clause (2). This is defined as the direct staffing cost;

3.9 (7) for employee-related expenses, multiply the direct staffing cost, excluding any  
3.10 shared and individual direct staff hours provided through monitoring technology, by one  
3.11 plus the employee-related cost ratio in subdivision 5, paragraph (b), clause (3);

3.12 (8) for client programming and supports, the commissioner shall add \$2,179; and

3.13 (9) for transportation, if provided, the commissioner shall add \$1,680, or \$3,000 if  
3.14 customized for adapted transport, based on the resident with the highest assessed need.

3.15 (b) The total rate must be calculated using the following steps:

3.16 (1) subtotal paragraph (a), clauses (7) to (9), and the direct staffing cost of any  
3.17 shared and individual direct staff hours provided through monitoring technology that  
3.18 was excluded in clause (7);

3.19 (2) sum the standard general and administrative rate, the program-related expense  
3.20 ratio, and the absence and utilization ratio;

3.21 (3) divide the result of clause (1) by one minus the result of clause (2). This is  
3.22 the total payment amount; and

3.23 (4) adjust the result of clause (3) by a factor to be determined by the commissioner  
3.24 to adjust for regional differences in the cost of providing services.

3.25 (c) The payment methodology for customized living, 24-hour customized living, and  
3.26 residential care services must be the customized living tool. Revisions to the customized  
3.27 living tool must be made to reflect the services and activities unique to disability-related  
3.28 recipient needs.

3.29 (d) For individuals enrolled prior to January 1, 2014, the days of service authorized  
3.30 must meet or exceed the days of service used to convert service agreements in effect on  
3.31 December 1, 2013, and must not result in a reduction in spending or service utilization due  
3.32 to conversion during the implementation period under section 256B.4913, subdivision 4a.  
3.33 If during the implementation period, an individual's historical rate, including adjustments  
3.34 required under section 256B.4913, subdivision 4a, paragraph (c), is equal to or greater  
3.35 than the rate determined in this subdivision, the number of days authorized for the  
3.36 individual is 365.

4.1 (e) The number of days authorized for all individuals enrolling after January 1, 2014,  
4.2 in residential services must include every day that services start and end.

4.3 Sec. 3. Minnesota Statutes 2015 Supplement, section 256B.4914, subdivision 10,  
4.4 is amended to read:

4.5 Subd. 10. **Updating payment values and additional information.** (a) From  
4.6 January 1, 2014, through December 31, 2017, the commissioner shall develop and  
4.7 implement uniform procedures to refine terms and adjust values used to calculate payment  
4.8 rates in this section.

4.9 (b) No later than July 1, 2014, the commissioner shall, within available resources,  
4.10 begin to conduct research and gather data and information from existing state systems or  
4.11 other outside sources on the following items:

4.12 (1) differences in the underlying cost to provide services and care across the state; and

4.13 (2) mileage, vehicle type, lift requirements, incidents of individual and shared rides,  
4.14 and units of transportation for all day services, which must be collected from providers  
4.15 using the rate management worksheet and entered into the rates management system; and

4.16 (3) the distinct underlying costs for services provided by a license holder under  
4.17 sections 245D.05, 245D.06, 245D.07, 245D.071, 245D.081, and 245D.09, and for services  
4.18 provided by a license holder certified under section 245D.33.

4.19 (c) Using a statistically valid set of rates management system data, the commissioner,  
4.20 in consultation with stakeholders, shall analyze for each service the average difference  
4.21 in the rate on December 31, 2013, and the framework rate at the individual, provider,  
4.22 lead agency, and state levels. The commissioner shall issue semiannual reports to the  
4.23 stakeholders on the difference in rates by service and by county during the banding period  
4.24 under section 256B.4913, subdivision 4a. The commissioner shall issue the first report  
4.25 by October 1, 2014.

4.26 (d) No later than July 1, 2014, the commissioner, in consultation with stakeholders,  
4.27 shall begin the review and evaluation of the following values already in subdivisions 6 to  
4.28 9, or issues that impact all services, including, but not limited to:

4.29 (1) values for transportation rates for day services;

4.30 (2) values for transportation rates in residential services;

4.31 (3) values for services where monitoring technology replaces staff time;

4.32 (4) values for indirect services;

4.33 (5) values for nursing;

4.34 (6) component values for independent living skills;

4.35 (7) component values for family foster care that reflect licensing requirements;

- 5.1 (8) adjustments to other components to replace the budget neutrality factor;
- 5.2 (9) remote monitoring technology for nonresidential services;
- 5.3 (10) values for basic and intensive services in residential services;
- 5.4 (11) values for the facility use rate in day services, and the weightings used in the
- 5.5 day service ratios and adjustments to those weightings;
- 5.6 (12) values for workers' compensation as part of employee-related expenses;
- 5.7 (13) values for unemployment insurance as part of employee-related expenses;
- 5.8 (14) a component value to reflect costs for individuals with rates previously adjusted
- 5.9 for the inclusion of group residential housing rate 3 costs, only for any individual enrolled
- 5.10 as of December 31, 2013; and
- 5.11 (15) new costs as a result of federal, state, or local government changes in minimum
- 5.12 wage;
- 5.13 (16) new costs as a result of changes in the United States Department of Labor
- 5.14 overtime and exempt worker rules; and
- 5.15 (17) any changes in state or federal law with an impact on the underlying cost of
- 5.16 providing home and community-based services.
- 5.17 (e) The commissioner shall report to the chairs and the ranking minority members of
- 5.18 the legislative committees and divisions with jurisdiction over health and human services
- 5.19 policy and finance with the information and data gathered under paragraphs (b) to (d)
- 5.20 on the following dates:
- 5.21 (1) January 15, 2015, with preliminary results and data;
- 5.22 (2) January 15, 2016, with a status implementation update, and additional data
- 5.23 and summary information;
- 5.24 (3) January 15, 2017, with the full report, which shall include fiscal notes for new
- 5.25 costs, including but not limited to the cost to providers as a result of changes in federal,
- 5.26 state, or local government minimum wage requirements; United States Department of
- 5.27 Labor overtime and exempt worker rules; and changes in provider background studies and
- 5.28 licensure fees; and
- 5.29 (4) January 15, 2019, with another full report, and a full report once every four
- 5.30 years thereafter.
- 5.31 (f) Based on the commissioner's evaluation of the information and data collected in
- 5.32 paragraphs (b) to (d), the commissioner shall make recommendations to the legislature by
- 5.33 January 15, 2015, to address any issues identified during the first year of implementation.
- 5.34 After January 15, 2015, the commissioner may make recommendations to the legislature
- 5.35 to address potential issues.

6.1 (g) The commissioner shall implement a regional adjustment factor to all rate  
6.2 calculations in subdivisions 6 to 9, effective no later than January 1, 2015. Prior to  
6.3 implementation, the commissioner shall consult with stakeholders on the methodology to  
6.4 calculate the adjustment.

6.5 (h) The commissioner shall provide a public notice via LISTSERV in October of  
6.6 each year beginning October 1, 2014, containing information detailing legislatively  
6.7 approved changes in:

6.8 (1) calculation values including derived wage rates and related employee and  
6.9 administrative factors;

6.10 (2) service utilization;

6.11 (3) county and tribal allocation changes; and

6.12 (4) information on adjustments made to calculation values and the timing of those  
6.13 adjustments.

6.14 The information in this notice must be effective January 1 of the following year.

6.15 (i) No later than July 1, 2016, the commissioner shall develop and implement, in  
6.16 consultation with stakeholders, a methodology sufficient to determine the shared staffing  
6.17 levels, including daytime and overnight shared staffing levels, necessary to meet, at a  
6.18 minimum, health and welfare needs of individuals who will be living together in shared  
6.19 residential settings, and the required shared staffing activities described in subdivision 2,  
6.20 paragraph (l). This determination methodology must ensure staffing levels are adaptable  
6.21 to meet the needs and desired outcomes for current and prospective residents in shared  
6.22 residential settings and provide rates sufficient to compensate every shared and individual  
6.23 staffing hour in each residential setting. The commissioner shall publish the methodology  
6.24 instructions in the Disability Waiver Rate System provider manual and in a bulletin to all  
6.25 lead agencies, tribes, lead agency and contract case managers, and service providers.

6.26 (j) When the available shared staffing hours in a residential setting are insufficient to  
6.27 meet the needs of an individual who enrolled in residential services after January 1, 2014,  
6.28 or insufficient to meet the needs of an individual with a service agreement adjustment  
6.29 described in section 256B.4913, subdivision 4a, paragraph (f), then individual staffing  
6.30 hours shall be used.

6.31 Sec. 4. Minnesota Statutes 2014, section 256B.4914, is amended by adding a  
6.32 subdivision to read:

6.33 Subd. 10a. **Service authorization deadlines.** (a) Service providers shall provide  
6.34 lead agencies with each recipient's completed staffing calculator worksheet at least 60 days  
6.35 prior to the expiration of the recipient's current service authorization.

7.1 (b) The lead agency and the service provider must agree on the rates and units of  
7.2 service for a renewal of service authorization no later than 30 days prior to the current  
7.3 service authorization expiration.

7.4 (c) The new service authorization must be processed and approved by the lead  
7.5 agency no later than the expiration date of the current service authorization.

7.6 (d) If the lead agency fails to comply with paragraph (c) and the service provider  
7.7 continues to provide service to the recipient, once a new service authorization is approved,  
7.8 the lead agency shall pay the service provider from:

7.9 (1) nonmedical assistance funds, ... percent of the final agreed upon rate for every  
7.10 day that an approved service authorization was not in place; and

7.11 (2) medical assistance funds, the final agreed upon rate for every day that an  
7.12 approved service authorization was not in place.

7.13 (e) The provider shall give a notice of termination to the recipient in accordance  
7.14 with section 245D.10, subdivision 3a, after providing service for at least seven days  
7.15 without an approved service authorization.